

Encore Environment Limited – Terms & Conditions for the Supply of Services

1. BASIS OF CONTRACT

- 1.1 Your order (whether given orally or in writing or by email) (**Order**) for bin or skip delivery, waste collection, bin hire services, other waste management services or waste consultancy services (**Services**) constitutes an offer by you to purchase Services in accordance with these terms and conditions.
- 1.2 Your Order shall only be deemed to be accepted when we issue written or emailed acceptance of the Order at which point and on which date a contract (**Contract**) shall come into existence between us for the supply of Services on these terms and conditions.
- 1.3 These terms and conditions apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2. SUPPLY OF SERVICES

- 2.1 We shall supply the Services to you in accordance with the terms of the Order in all material respects.
- 2.2 We shall use our reasonable endeavours to meet any dates and times agreed with you for collection, delivery or performance of other services but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 2.3 In particular you acknowledge that we cannot provide any certainty in respect of delivery or collection time for Orders received later than 12pm on the Working Day (meaning any Monday to Friday when banks in London are open for business) immediately prior to the requested collection or delivery date.
- 2.4 Where any sub-contractor fails to attend your site at the agreed time, we will attempt to arrange for an emergency supplier to attend in its place provided that you notify us promptly of the non-attendance.
- 2.5 We warrant to you that the Services will be provided using reasonable care and skill.

3. CUSTOMER'S OBLIGATIONS

- 3.1 You shall:

- (a) ensure that the terms of the Order are complete and accurate;
- (b) co-operate reasonably with us in all matters relating to the Services;
- (c) provide us, our employees, agents, consultants and sub-contractors, with access to your premises as is reasonably required by the supply of the Services;
- (d) provide us with such information as we may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (e) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- (f) keep and maintain all bins, skips and other property owned by us or our sub-contractors (**Supplier Property**) at your premises in safe custody at your own risk (insured by you), maintain the Supplier Property in good condition until returned to us or our sub-contractors, and not dispose of or use the Supplier Property other than in accordance with our written instructions or authorisation;
- (g) not allow any Supplier Property to be moved to a different site without our prior written consent;
- (h) allow us or our sub-contractors unimpeded access to your site on the agreed dates to allow delivery or collection (as the case may be) and ensure there are safe working conditions on site as far as they relate to the delivery or collection;
- (i) in the case of collection, ensure that the relevant bins or skips are presented for collection by us or our sub-contractors at the agreed times;
- (j) use all reasonable endeavours to prevent unauthorised access to any Supplier Property including keeping it in a secure area of your site;
- (k) use all reasonable endeavours to prevent contamination of any bins or skips designated for particular segregated waste types;
- (l) use best endeavours to ensure that no bins or skips are contaminated with restricted or prohibited waste (whether restricted or prohibited under statute or otherwise);
- (m) not overload any bin or skip above its recommended or designated load limits;
- (n) follow any site waste management plan issued to you by us, including but not limited to the separation of plasterboard from other waste;
- (o) be liable for any damage to our sub-contractors' vehicles or other property arising from the acts or omissions of your agents, employees or other sub-contractors;

- (p) not contact our sub-contractors directly in respect of any Services, and where we have arranged for Supplier Property to be delivered to you, you shall arrange collection through us and no other person; and
 - (q) notify us as soon as possible where you no longer require any ordered Services.
- 3.2 If we incur any costs or losses from our sub-contractors arising directly or indirectly from your acts or omissions or your failure to comply with your obligations set out in these terms and conditions (**Customer Default**), you will reimburse us in full for such costs or losses.
- 3.3 If our performance of any of our obligations under the Contract is prevented or delayed by any Customer Default:
 - (a) we shall without limiting our other rights or remedies have the right to suspend performance of the Services until you remedy the Customer Default, and to rely on the Customer Default to relieve us from the performance of any of our obligations to the extent the Customer Default prevents or delays our performance of any of our obligations; and
 - (b) we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of our obligations as set out in this clause 3.3.

4. CHARGES AND PAYMENT

- 4.1 The charges for the Services shall be as agreed with you on any rate card or other schedule of rates in force from time to time. In respect of any Services not included on such rate card, the charges will be our then current standard charges for the relevant Service.
- 4.2 We may from time to time agree to pass to you a proportion of the rebates received by us from our sub-contractors. You acknowledge that rebates are not available for all material types, are not offered by all sub-contractors, fluctuate on a daily basis and may be subject to reductions for sub-contractors' administration charges or reductions for contaminated waste.
- 4.3 You acknowledge that some of our sub-contractors may specify minimum quantities or weights for bin or skip collection and may apply additional charges where a quantity or weight below such minimum quantities is requested or collected. You agree that the charges for the Services will be increased accordingly where you request a bin collection below such minimum quantities or weights. You are solely responsible for the selection of the type of skip or bin and we will accept no liability for minimum quantity or weight charges imposed as a result of you selecting an inappropriately large skip or bin.

- 4.4 We select our preferred sub-contractors based on their cost and service levels. Where a site needs to be cleared quickly you acknowledge that we may have to instruct sub-contractors with higher rates and you agree that the charges for Services will increase accordingly.
- 4.5 We shall be entitled to invoice you for any Services provided immediately after their supply but we shall normally issue a consolidated invoice at regular intervals.
- 4.6 You shall pay each invoice submitted by us:
- (a) in accordance with any payment terms agreed between us from time to time, or in the absence of such agreement, within 30 days of the date of the invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by us.
- 4.7 You shall raise any dispute or query in respect of our invoices as soon as reasonably practicable after becoming aware of such dispute or query and both you and we will negotiate in good faith to seek to resolve any dispute as soon as reasonably possible. Where you dispute only part of an invoice, you shall pay the undisputed part in accordance with clause 4.6 above.
- 4.8 All amounts payable by you under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by us to you, you shall, on receipt of a valid VAT invoice from us, pay to us such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 4.9 If you fail to make any payment due to us under the Contract by the due date for payment, then you shall pay interest on the overdue amount in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. You shall pay the interest together with the overdue amount.
- 4.10 You shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).
- 4.11 You shall not be entitled to withhold payment of any amount due to us by reason of your own administrative processes not being satisfied, including but not limited to any failure by your employees or agents to raise a purchase order using your own forms and/or systems.

5. LIMITATION OF LIABILITY:

5.1 Nothing in the Contract shall limit or exclude our liability for:

- (a) death or personal injury caused by our negligence, or the negligence of our employees, agents or sub-contractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

5.2 Subject to clause 5.1, we shall not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of anticipated savings;
- (c) loss of damage to goodwill; and
- (d) any indirect or consequential loss.

5.3 Subject to clause 5.1, our total liability to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the lower of £500,000 and the total Charges paid by you in respect of Services during the previous 12 months (or anticipated to be paid where the Services have not been provided for 12 months).

5.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

5.5 This clause 5 shall survive termination of the Contract.

6. TERMINATION

6.1 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 28 days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the

purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

6.2 Without limiting our other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to you if you fail to pay any amount due under the Contract (or any other contract between us) on the due date for payment and remain in default not less than 28 days after being notified in writing or by email to make such payment.

6.3 Without limiting our other rights or remedies, we may suspend provision of the Services under the Contract or any other contract between us if you become subject to any of the events listed in clause 6.1(b) to clause 6.1(d) or we reasonably believe that you are about to become subject to any of them, or if you fail to pay any amount due under this Contract on the due date for payment.

6.4 Where you cancel an Order for delivery or collection prior to such delivery or collection taking place, we shall use our reasonable endeavours to mitigate our losses but you shall reimburse us in full for any cancellation costs imposed on us by our sub-contractors.

7. GENERAL

7.1 We shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of our obligations under the Contract if such delay or failure result from events, circumstances or causes beyond our reasonable control.

7.2 The Contract constitutes the entire agreement between you and us and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to its subject matter.

7.3 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these terms and conditions or the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these terms and conditions or the Contract.

- 7.4 No variation of the Contract shall be effective unless it is in writing and signed by the parties (or our respective authorised representatives).
- 7.5 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:
- (a) waive that or any other right or remedy; or
 - (b) prevent or restrict the further exercise of that or any other right or remedy.
- 7.6 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 7.7 No one other than a party to the Contract shall have any right to enforce any of its terms.
- 7.8 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 7.9 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.